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No. 476

ILLINOIS PACKING COMPANY, A CORPORATION,
PETITIONER

v.

CHARLES B. HENDERSON, INDIVIDUALLY AND AS
ACTING ADMINISTRATOR OF THE OFFICE OF FED-
ERAL LOAN ADMINISTRATOR, ETC., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES EMERGENCY COURT OF APPEALS

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINION BELOW

The opinion of the United States Emergency Court of Appeals has not yet been reported in the Federal Reporter, but is included in the record at pages 84 to 87.

JURISDICTION

The judgment of the Emergency Court of Appeals was entered on August 15, 1946 (R. 88). The petition for certiorari was filed September 9, 1946. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as

amended, and Section 204 (d) of the Emergency Price Control Act of 1942 (50 U. S. C. App., Supp. V, Sec. 924 (d)).

QUESTION PRESENTED

Whether the provisions of Amendment No. 2 to Regulation No. 3 of Defense Supplies Corporation Livestock Slaughter Payments (9 F. R. 1820, R. 16), limiting eligibility to receive extra compensation at the rate of eighty cents per hundred pounds to unaffiliated slaughterers not owned or controlled by and who do not own or control a processor or purveyor of meat and defining own or control as including the ownership of in excess of ten percent of any class of outstanding stock, are lawful.

STATUTES, EXECUTIVE ORDERS, DIRECTIVES AND REGULATION

The pertinent provisions of Section 2 (e) of the Emergency Price Control Act of 1942, 56 Stat. 23, 26, Section 2 of Public Law No. 88, 79th Congress, 1st Sess., Executive Order 9250 (7 F. R. 7871), the directive of October 25, 1943 of the Office of Economic Stabilization (8 F. R. 14641), and Amendment No. 2 to Regulation No. 3 of Defense Supplies Corporation (9 F. R. 1820) appear in the record at pages 13 to 18.

STATEMENT

In June 1943, as part of the President's hold-the-line policy (E. O. 9328, 8 F. R. 4681), the maximum prices of carcass beef and wholesale cuts of

beef, were, by order of the Economic Stabilization Director, reduced approximately ten percent (Amendment No. 15 to RMPR 169, 8 F. R. 7675). This reduction was compensated for by subsidy payments made by Defense Supplies Corporation (later Reconstruction Finance Corporation) under its Regulation No. 3 (8 F. R. 10826).

The Director of Economic Stabilization, by his directive of October 25, 1943 (8 F. R. 14641) provided for an additional subsidy of eighty cents per cwt. to nonprocessing slaughterers of beef. The directive of October 25, 1943 was implemented by Defense Supplies Corporation's Amendment No. 2 to Regulation No. 3 (9 F. R. 1820). Amendment No. 2 required that to be eligible for the special subsidy of eighty cents per cwt., the applicant must be an unaffiliated, non-processing slaughterer; that is, it must not "own or control" or "be owned or controlled by" a "processor or purveyor of meat." The amendment defines the phrase "own or control" as meaning "to own or control directly or indirectly a partnership equity or in excess of ten percent of any class of outstanding stock or to have made loans or advances in excess of five percent of the other person's monthly sales." (R. 31.)

Petitioner demanded payment under Amendment No. 2 of \$308,520.08 claimed to be due for slaughter during the period November 1, 1943, through April 30, 1944, and \$48,086.95 for slaughter during the period May 1 through May

29, 1944. There is no controversy with respect to the payment of the basic meat subsidy under Regulation No. 3.

The claim was denied because from November 1, 1943, to May 29, 1944, in excess of ten percent of the outstanding capital stock of petitioner was owned by the members of a partnership operating as a processor or purveyor of meat (R. 2). The partnership's stockholdings amounted to approximately forty-eight percent of the capital stock of petitioner (R. 2). The remainder of the stock was held by thirty-one stockholders (R. 20).

ARGUMENT

The questions in this case are the same as were raised in *Gibbs v. Reconstruction Finance Corporation*, No. 147, and *Atlantic Meat Co. v. Reconstruction Finance Corporation*, No. 154, in both of which this Court denied certiorari on October 14, 1946. Petitioner admits that the *Gibbs* case "involves issues and facts substantially similar to those involved in the present controversy" (Pet., 18).

Petitioner seeks to distinguish the *Gibbs* case from this because the *Gibbs* case involved a debt of the subsidy applicant which it could refinance, whereas this case involves stock ownership, the control of which did not lie with the applicant. The record, however, shows that after respondents notified petitioner of the grounds of ineligibility on May 20, 1944, a transfer of the

disqualifying stock ownership was arranged and made effective May 29, 1944 (R. 6 to 7). Furthermore, control through 48 percent stock ownership would seem to be greater than through the indebtedness involved in the *Gibbs* case. In any event, the question as to the validity of the regulation in a case in which the subsidy was denied because of stock ownership was presented in the *Atlantic Meat* case.

CONCLUSION

Inasmuch as the issues in this case are the same as in the *Gibbs* and *Atlantic Meat* cases in which this Court denied certiorari, there is no reason to grant the petition here. In addition, it is to be noted that the meat subsidy program was terminated October 14, 1946, so that the issue will not arise again except perhaps as to claims already accrued.

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NOVEMBER 1946.